



## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9936]

RIN 1545-BO59

### Guidance on Passive Foreign Investment Companies; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to the final regulations Treasury Decision 9936, that were published in the **Federal Register** on Friday, January 15, 2021. The final regulations regarding the determination of whether a foreign corporation is treated as a passive foreign investment company (“PFIC”) for purposes of the Internal Revenue Code (“Code”), and the application and scope of certain rules that determine whether a United States person that indirectly holds stock in a PFIC is treated as a shareholder of the PFIC.

**DATES:** These corrections are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and applicable on or after January 15, 2021.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations §§ 1.1291–0 and 1.1291–1, 1.1297–0 through 1.1297–2, 1.1298–0, 1.1298–2, and 1.1298–4, Christina G. Daniels at (202) 317–6934; concerning the regulations §§ 1.1297–4 and 1.1297–6, Josephine Firehock at (202) 317–4932 (not toll-free numbers).

### SUPPLEMENTARY INFORMATION:

#### Background

The final regulations (TD 9936) that are the subject of this correction are issued under sections 1297 and 1298 of the Internal Revenue Code.

## Need for Correction

As published on January 15, 2021 (86 FR 4516), the final regulations (TD 9936) contain errors that need to be corrected.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

### PART 1--INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 1.1297–0 is amended by revising the entry for § 1.1297–2(g)(12) to read as follows:

#### § 1.1297–0 Table of contents.

\* \* \* \* \*

*§ 1.1297–2 Special rules regarding look-through subsidiaries and look-through partnerships.*

\* \* \* \* \*

(g) \* \* \*

(12) TFC obligation.

\* \* \* \* \*

**Par. 3.** Section 1.1297-1 is amended by:

a. Removing “§ 1.1297–2(b)(2)(i)” in the first sentence of paragraph (d)(1)(v)(C)(1) and adding in its place “§ 1.1297–2(b)(2)(i)”.

b. Revising paragraph (f)(8).

The revision reads as follows:

## § 1.1297–1 Definition of passive foreign investment company.

\* \* \* \* \*

(f) \* \* \*

(8) *Related person*. For purposes of applying the rules of this section and §1.1297-2 with respect to section 1297(b)(2)(C), the term means a *related person* within the meaning of section 954(d)(3).

\* \* \* \* \*

**Par. 4.** Section 1.1297-2 is amended by:

a. Removing “of this section))” in the first sentence of paragraph (b)(3)(i) and adding in its place “of this section”).

b. Revising the first sentence of paragraph (c)(4)(iii)(B).

c. Removing “PFIC .” at the end of paragraph (e)(3)(i)(B)(1) and adding in its place “PFIC.”

d. Revising the first sentence of paragraph (g)(4)(iv)(A)(2)(iii).

The revisions read as follows:

## § 1.1297–2 Special rules regarding look-through subsidiaries and look-through partnerships.

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(iii) \* \* \*

(B) \* \* \* The results are the same as in paragraph (c)(4)(ii)(B) of this section (the results in *Example 2*), except that TFC’s assets also do not include the stock of LTS2.

\* \* \*

\* \* \* \* \*

(g) \* \* \*

(4) \* \* \*

(iv) \* \* \*

(A) \* \* \*

(2) \* \* \*

(iii) \* \* \* For purposes of paragraph (b)(3) of this section, FPS qualifies as a look-through partnership because TFC satisfies the active partner tests of both paragraphs (g)(4)(ii)(A) and (B) of this section.\* \* \*

\* \* \* \* \*

**Par. 5.** Section 1.1297-4 is amended by:

a. Revising paragraph (d)(6).

b. Removing “written by a” in paragraph (f)(5) and adding in its place “written by, a”.

The revision reads as follows:

#### **§ 1.1297–4 Qualifying insurance corporation.**

\* \* \* \* \*

(d) \* \* \*

(6) *Stock ownership.* For purposes of this section, ownership of stock in a foreign corporation means either direct ownership of such stock or indirect ownership determined using the rules specified in § 1.1291–1(b)(8) (but without regard to the 50 percent ownership requirement of §1.1291-1(b)(8)(ii)(A)).

\* \* \* \* \*

**Par. 6.** Section 1.1298-2 is amended by revising the second sentence of paragraph (c)(3), the second sentence of paragraph (f)(1)(i)(B), and the first sentence of paragraph (f)(2)(ii) to read as follows:

## § 1.1298–2 Rules for certain corporations changing businesses.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \* However, if activities performed by the officers and employees of a look-through subsidiary of a corporation or of a look-through partnership (including a look-through subsidiary or a look-through partnership with respect to which paragraph (d) of this section applies) would be taken into account by the corporation pursuant to § 1.1297–2(e) if it applied, such activities are taken into account for purposes of the determination of the existence of an active trade or business and the determination of whether assets are used in an active trade or business.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) \* \* \* The residual gain computed under § 1.1297–2(f)(2) on the sale of the FS stock is \$10x. \* \* \*

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \* The results are the same as in paragraph (f)(1)(ii) of this section (the results in *Example 1*), except that under paragraph (c)(1) of this section, the passive income considered attributable to proceeds from a disposition of one or more active trades or businesses is \$4x (from investment of disposition proceeds). \* \* \*

\* \* \* \* \*

## § 1.1298-4 [Amended]

**Par. 7.** Section 1.1298-4(f) is amended by removing “Janyuary” and adding in its place “January”.

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